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CHRISTOPHER A. PRINE
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Fourteenth Court of Appeals
301 Fannin Street, Room 245
Houston, TX 77002

RE: *State v. Baldwin*,
Cause No. 14-19-00154-CR

To the Honorable Panel of the Fourteenth Court of Appeals,

This appeal was argued on December 11, 2019. Prior to argument, the Court issued a letter asking the parties to discuss (1) whether Judge Glass made an implied finding of fact that the traffic stop was unlawful, contrary to the oral finding of fact made by Judge Collins; (2) whether Judge Glass was authorized to make that implied finding without the benefit of a live hearing; and (3) what remedy, if any, may be required under *Garcia v. State*, 15 S.W.3d 533, 535 (Tex. Crim. App. 2000) and *Bass v. State*, 626 S.W.2d 769, 775 n.2 (Tex. Crim. App. 1982). The Court permitted the parties to submit supplemental letters withing one week of argument.

Judge Glass did make an implied finding that the traffic stop was unlawful. He was permitted to do so without a live hearing.

In *Bass v. State*, the defendant was convicted of murder. *Bass*, 626 S.W.2d at 770. The trial was presided over by Judge Williford. *Id.* During the trial, the defendant challenged the voluntariness of his confession. The court held a hearing and issued findings that the confession was voluntary. *Id.* The Court of Criminal appeals overturned defendant's conviction. *Id.* Judge Duggan presided over the defendant's retrial. *Id.*, at 771. The defendant again challenged the voluntariness of his confession. *Id.* Judge Duggan denied defendant's request to hold a separate hearing on the issue. *Id.* The judge later issued findings that he reviewed the record from the previous

conviction and Judge Williford's findings. *Id.* Judge Duggan agreed with the decision to admit the defendant's confession. *Id.*

The question before the Court of Criminal Appeals was "whether, absent a claim of new evidence, the hearing held during the [defendant's] first trial, before a different judge, is sufficient to satisfy the requirements of *Jackson v. Denno* and [Texas Code of Criminal Procedure] Article 38.22." *Id.* The Court found that, "[a]bsent a claim of new evidence on issue of a confession's voluntariness, and as long as a procedurally and substantively adequate hearing has been held before a fact finder other than the jury which determines the defendant's guilt or innocence, the United States Constitution does not require that a trial judge hold a second hearing to determine the voluntariness of a confession." *Id.*, at 774-75. The judge may make his decision based upon the evidence presented at the earlier hearing and may adopt the findings and conclusions of the fact finder at the earlier hearing. *Id.*, at 775. However, the Court found it necessary to abate the appeal and supplement the current record with the record from the hearing on the voluntariness of the confession, as well as the previous judge's findings. *Id.*

In *Garcia v. State*, the defendant challenged the admission of a confession, on the ground that the statement was involuntary. *Garcia*, 15 S.W.3d at 534. After a hearing was held and testimony taken, the trial court then determined that the statement was voluntary and permitted it to be admitted at trial. *Id.*

On appeal, the parties agreed that although the trial court determined that the statement was voluntarily made, the trial court failed to reduce its findings to a written order. *Id.* The Court of Appeals abated the appeal and remanded the cause to the trial court. *Id.*, citing *Garcia v. State*, No. 07-97-0008-CR, 1998 WL 175513 at *1 (Tex. App.--Amarillo April 14, 1998) (order to abate appeal) (not designated for publication). The trial judge to whom the cause was being remanded was not the same as the trial judge who held the hearing on the motion to suppress. Thus, the Court of Appeals noted that "the regular judge of a district court generally has the power to review orders made by a predecessor judge." *Id.*, citing *Garcia*, 1998 WL, at *1.

Following return from remand, the Court of Appeals affirmed the conviction. *Garcia v. State*, No. 07-97-0008-CR, 1998 WL 675869 (Tex. App.--Amarillo October 1, 1998) (not designated for publication). The Court of Criminal Appeals granted petition for discretionary review to determine "whether [the defendant] was entitled to remand for a new suppression hearing or new trial" and "whether the [defendant's] statement was inadmissible at trial and should have been suppressed." *Id.*, at 535.

The Court noted that at the suppression hearing, testimony was taken from Abdon Rodriguez, the police officer who took the confession, and from the defendant. *Id.* Thus, the trial court's conclusion that the statement was voluntary was based on a direct evaluation of the witnesses' credibility and demeanor. *Id.* Because hearings without live witnesses are not authorized to determine admissibility and voluntariness of a defendant's statement to police, the Court reversed the case so that Garcia could be afforded a new hearing to determine the voluntariness of his confession.

Judge Glass did not make any written findings of fact or conclusions of law. And because appellant has not challenged the voluntariness of a statement, written findings are unnecessary¹. The Supreme Court has observed that a defendant's confession is like no other evidence. "It is probably the most probative and damaging evidence that can be admitted against him, and, if it is a full confession, a jury may be tempted to rely on it alone in reaching its decision." [Internal citations omitted] *Arizona v. Fulminante*, 499 U.S. 279, 280, 111 S. Ct. 1246, 1248–49, 113 L. Ed. 2d 302 (1991). Because of this, courts must use the utmost caution in admitting and evaluating the harm from a challenged confession.

Appellant has not raised a challenge to the voluntariness of any statements made. Thus, this Court can infer any reasonable findings that support Judge Glass' order and are supported by the record. Additionally, unlike in *Garcia*, Judge Glass' suppression was not made based upon a credibility determination. Although Deputy Johnson testified the lane change was unsafe, he offered no facts to back that conclusory statement. In fact, the deputy specifically testified that appellant used his turn signal, was not speeding, did not nearly cause any accidents, and did not cut any other vehicle off. (RR I 30, 31).

Regarding the triangular marking on the road, Judge Glass had the testimony and video to make his ruling. The parties disagree as to whether the video shows appellant crossing into the area. Nevertheless, the record conclusively evidences that the State failed to establish that appellant failed to obey an official traffic control device. An operator of a vehicle must comply with an applicable official traffic control device unless the person is otherwise directed by a traffic or police officer; or operating an

¹ The Fourteenth Amendment to the United States Constitution requires that any confession of the accused must be given voluntarily, and that a hearing on whether the confession was voluntary must be held apart from the question of the truth or falsity of the confession. *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964). In any case that the defendant challenges the voluntariness of his statement, the trial court is required to conduct a hearing out of the presence of the jury on the sole issue of the voluntariness of the statement. *Id.* The Texas Code of Criminal Procedure incorporates the requirements of *Jackson v. Denno* and also requires the trial judge to enter a written order setting forth the specific factual findings that support its conclusion that the confession was voluntary. *Id.*; TEX. CODE CRIM. PROC. ANN. art. 38.22, § 6.

authorized emergency vehicle and is subject to exceptions. TEX. TRANSP. CODE ANN. § 544.004(a). An official traffic-control device is a “sign, signal, marking, or other device that is: (A) consistent with this subtitle; (B) placed or erected by a public body or officer having jurisdiction; and (C) used to regulate, warn, or guide traffic.” TEX. TRANSP. CODE ANN. § 541.304(1). The State did not offer any evidence that the striped area is an official traffic control device governed by the Transportation Code. It also failed to establish its purpose and what legally constitutes a failure to comply with remaining out of the area.

While counsel could not find any cases addressing this specific marking, she believes that appellant’s purported driving in this area constituted a lane change from the main lanes to the exit ramp. Thus, even if this Court does not believe the video conclusively proves whether a traffic infraction did or did not happen, the State was required to prove that appellant made the change unsafely. As discussed above, it did not.

This Court is not required to abate this appeal for a hearing and/or findings by Judge Glass. This panel, like Judge Glass, has all the information necessary to affirm the granting of the motion to suppress in its entirety.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mandy Miller', with a stylized, cursive script.

Mandy Miller

cc: Cory Stott
Assistant District Attorney
Harris County, Texas